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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,229	10/31/2003	Bruce Friedman	039199-9545-00	1506
7590	09/25/2007		EXAMINER	
JOSEPH D. KUBORN ANDRUS, SCEALES, STARKE & SAWALL 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			NATNITHITHADHA, NAVIN	
			ART UNIT	PAPER NUMBER
			3735	
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			09/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/698,229	FRIEDMAN ET AL.
	Examiner Navin Natnithithadha	Art Unit 3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 June 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-39 and 41-51 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 20-38 and 47-49 is/are allowed.
- 6) Claim(s) 1-19,39,41-46,50 and 51 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 October 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Response to Amendment

1. Claims 1, 11, 13, 23, 39, 47, and 49 have been amended. Claims 40 have been cancelled. Claims 1-39 and 41-51 are pending.

Response to Arguments

2. Applicant's arguments, see Remarks, pp. 11-13, filed 15 June 2007, with respect to claims 1-10 and 16-19 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Richardson and Noiles.
3. Applicant's arguments, see Remarks, p. 13, filed 15 June 2007, with respect to claims 39, 41-46, and 50-51 have been fully considered and are persuasive. However, upon further consideration, a new ground(s) of rejection is made in view of Richardson and Noiles.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11, which is depended on claim 1, contains limitations directed to "a probe," "a temperature sensing element," "a disposable cover," and "a respiration sensing element," each of which are claimed in claim 1. Thus, it is not clear as to whether the above elements are additional elements to the elements of claim 1. Claims 12-15 are rejected because of their dependency to claim 11.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10, 16-19, 39, 41-46, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson et al, US 3,884,219 A ("Richardson"), in view of Noiles, US 3,999,537 A ("Noiles").

Claims 1-10 and 16-19: Richardson teaches a device 20 for simultaneously acquiring a temperature and a respiration rate of a patient (see Abstract and figs. 4-6), the device 20 comprising: a probe 32, including a proximal end, distal end, a collar 74 positioned at the proximal end, and connector 64, constructed of suitable plastic, stainless steel, or the like; a temperature sensing element 85 coupled to the probe and including a thermistor/thermocouple (see col. 4, ll. 36-37); a disposable cover 52, including a plate 66 and made of polystyrene or other suitable plastic material, that can be positioned over the probe 72; a respiration sensing element 90 coupled to the disposable cover 52;

Art Unit: 3735

a patient monitoring and data recording equipment 10 (see figs. 5 and 6). Richardson does not teach the respiration sensing element 90 is removable from the probe. However, Noiles teaches a device 10 comprising a respiration sensing element 18/19 that is removable from the device 10. It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Richardson to have the respiration sensing element 90 to be removable in order to have a disposable respiratory sensor for one-time use (see Richardson, col. 3, ll. 21-25, and Noiles, col. 2, ll. 9-15).

Claims 39, 41-46, 50, and 51: Richardson teaches the method of simultaneously acquiring a temperature and a respiration rate of a patient. Because the Applicant's method as claimed is not distinct from claims 1-10 and 16-19, these claims are rejected for the same reasons as stated above.

Allowable Subject Matter

6. Claims 20-38 and 47-49 are allowed.
7. Claims 11-15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

Art Unit: 3735

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Navin Natnithithadha
Patent Examiner
Art Unit 3735
09/17/2007